

**Supplemental Letter of Findings: 01-20150134
Individual Income Tax
For the Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

During a supplemental administrative hearing, Out-of-State Resident was able to establish that she was not an Indiana resident during 2011 and that the Department's assessment of individual income tax for that year should be abated.

ISSUE

I. Individual Income Tax - Residency.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); [45 IAC 3.1-1-22](#); Letter of Findings 01-20150134 (August 18, 2015).

Taxpayer challenges the Department of Revenue's determination that she was an Indiana resident during 2011 and the decision assessing Indiana individual income tax for that year.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") issued Taxpayer a letter stating that she was subject to Indiana's income tax filing requirement based on her possession of an Indiana driver's license. The Department assessed additional income tax. Taxpayer responded stating that she did not earn Indiana wages during 2011 and that she had resided at a Pennsylvania address since 2008. The Department responded pointing out that she claimed an Indiana Homestead Tax Credit during 2011.

Taxpayer disagreed with the Department's conclusion and submitted a protest to that effect. An administrative hearing was conducted by telephone. Taxpayer supplied copies of her 2011 Pennsylvania income tax return, a copy of a lease agreement by which she agreed to rent her Indiana home to an Indiana tenant, a notice sent to the Marion County Auditor's Office asking that the homestead credit be removed from her Indiana property, and a bill from the Marion County auditor for unpaid property taxes.

The Department issued a Letter of Findings August 2015 denying Taxpayer's protest on the ground that she failed to meet her burden of establishing that she had abandoned her Indiana domicile in 2008 when she purportedly relocated to Pennsylvania. Taxpayer requested a rehearing in part because she claimed that the person who spoke on her behalf during the original administrative hearing was not entitled to do so and failed to adequately make her case.

I. Individual Income Tax - Residency.

DISCUSSION

The issue is whether Taxpayer has provided sufficient evidence to establish that she had abandoned her Indiana domicile by 2011. This Supplemental Letter of Findings incorporates the statements of fact and the explanation of law set out in Letter of Findings 01-20150134 (August 18, 2015), 20151028 Ind. Reg. 045150353NDA

This Supplemental Letter of Findings reiterates the burden any taxpayer must meet in order to establish that a proposed assessment was wrong. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c).

Indiana's individual income tax is imposed upon "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12.

The Department's regulation, [45 IAC 3.1-1-22](#), provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." Instead, the determination is made on a case by case basis. *Id.*

The original Letter of Findings noted that Taxpayer owns an Indiana home and has claimed a homestead credit on that property before, during, and after 2011. At the time of the original hearing, Taxpayer provided evidence that she had worked with the Marion County Auditor's Office to revoke the credit claimed in 2011, 2012, and 2013. The August 2015 Letter of Findings noted that she had been sent bills by Marion County "to recoup an additional amount of property tax for 2011, 2012, and 2013," but that there was "nothing to establish that she has since paid that amount."

Taxpayer has now provided a copy of a cashier's check made out to the "Marion County Auditor" for the amount of additional property tax owed as a result of the Homestead Credit revocation.

In addition, Taxpayer has provided a copy of her 2011 Pennsylvania state tax return, copies of a Pennsylvania apartment lease agreement, copies of W2 statements from her Pennsylvania employer, copies of Pennsylvania utility bills, and a copy of her current Pennsylvania driver's license.

Given a "case by case" review of Taxpayer's facts, documentation, circumstances and bearing in mind that there is no "one set of standards that will accurately indicate the person's intent in every relocation," the Department is prepared to agree that Taxpayer has met her burden of establishing that by 2011, she had "abandoned" her Indiana domicile and established a domicile in Pennsylvania. There is nothing in Indiana law which provides that mere ownership of Indiana property necessarily makes that owner an Indiana resident for state tax purposes. In this particular case "[i]ntent and conduct . . . converge to establish a new domicile." *State Election Board v. Bayh*, 521 N.E.2d 1313, 1318 (Ind. 1988).

FINDING

Taxpayer's protest is sustained.

Posted: 05/25/2016 by Legislative Services Agency
An [html](#) version of this document.